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**U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090**



**U.S. Citizenship
and Immigration
Services**

B5

FILE:



Office: TEXAS SERVICE CENTER Date: AUG 13 2010

IN RE:

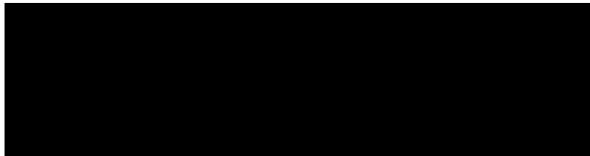
Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you

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Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The director's decision will be withdrawn. The matter will be remanded to the director for consideration of the merits of the petition.

The petitioner is a civil and structural engineering services company. It seeks to employ the beneficiary permanently in the United States as a civil engineer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. The director determined that although the petitioner had filed Form I-140 electronically on July 26, 2007, the petitioner had not submitted the required initial evidence to the Service Center within seven business days of e-filing the Form I-140. The director denied the petition since the petitioner had not established its eligibility in the instant matter.

On appeal, counsel states that the petitioner did file the required initial evidence, following the instructions on the Confirmation Receipt issued by the Texas Service Center on July 26, 2007 after the instant I-140 petition was e-filed. Counsel submits a FEDEX Express correspondence that states a package with reference information of [REDACTED] was shipped on August 2, 2007 to the Texas Service Center USCIS, Attn: E-Filed I-140, [REDACTED] and that [REDACTED] signed for the package on August 3, 2007. Counsel also submits two Forms I-797C issued by the Vermont Service Center dated August 3, 2007 for the beneficiary's and his spouses' I-485 Applications for Adjustment to Permanent Resident Status. [REDACTED] and [REDACTED].

Counsel also submits a copy of what the petitioner submitted as required initial documentation. These copies include counsel's cover letter dated August 1, 2007;¹ a copy of the Texas Service Center's Confirmation Receipt of the electronically filed I-140; a copy of the I-140 petition;² a cover letter from the petitioner of the first and second page of the petitioner's Form I-140 with the receipt number of [REDACTED], and a copy of the cover letter dated August 1, 2007 written by Mr. [REDACTED], identified as the Owner/President of Intel Services; a copy of the certified ETA Form 9089; an illegible single sheet brochure for Intel Services that appears to be part of an application for the Army Corps of Engineers that describes a proposed team of small business firms formed by the petitioner and describes recent projects of Intel Services; the beneficiary's pay stubs from April 1, 2007 to July 21, 2007 that uniformly indicate an hourly wage of \$33.28; a Small Business Administration personal financial statement for Mr. [REDACTED], dated July 23, 2007; and a Form 941, Employer's Quarterly Federal Tax Return for the second quarter of 2007, indicating the petitioner had one employee during this period of time. Finally counsel submits a copy of the

¹ This document notes corrections to the first and second page of the I-140 petition.

² This document consists of the first and second page of the petitioner's Form I-140 with the receipt number noted as [REDACTED]

beneficiary's diploma from the Tulane University School of Science and Engineering that indicates he graduated with a Doctorate in Philosophy on December 31, 2006.

The record shows that the appeal is properly filed and timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The director in his decision referred to the regulation at 8 C.F.R. § 102.2(b)(1) that states in pertinent part, "an applicant or petitioner must establish eligibility for a requested immigration benefit. An application or petition form must be completed as applicable and will with any initial evidence required by regulation or the instructions on the form. Any evidence submitted is considered part of the relating application or petition." Further, the director noted that based on the instructions for electronically filing Form I-140³ an applicant must submit the original labor certification, signed by the filer and certified by the Department of Labor, with supporting documentation to the Service Center that has jurisdiction over the matter and the case and the documentation must be received by the Service Center within seven business days of e-filing the Form.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.⁴

In the instant matter, USCIS computer records indicate that the beneficiary has an additional A number, as does his wife.⁵ The beneficiary's second A number is [REDACTED]. The AAO requested that the Texas Service Center send the second A file to the AAO for review. Upon review of the additional file, the petitioner's I-140 petition with accompanying required initial evidence is contained in the beneficiary's second A file along with the beneficiary's I-485 Application for Adjustment. The original certified ETA Form 9089 is found in this file, as well as the additional

³ The instructions for electronic filing a Form I-140 and the general electronic filing instructions regarding the submission of supporting documentation are available at <http://www.uscis.gov>.

⁴ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

⁵ These additional A numbers appear to have been erroneously assigned to the beneficiary and his wife based on their I-485 applications. The AAO notes that the instructions for e-filing the I-140 petition also state that paper-based applications, (such as the I-485 Form) should not be mailed with the accompanying required initial documentation for an e-filed petition, which may have also been instrumental in the misplaced I-140 petition. The AAO will consolidate the beneficiary's I-485 file [REDACTED] into his initial A file [REDACTED]. The beneficiary's spouse's A number will remain [REDACTED]

evidence submitted with the I-140, the copies of which counsel provided in her appeal. The petitioner's I-140 petition appears to have been manually date stamped on August 3, 2007.⁶

Thus the complete record reflects that the petitioner submitted the I-140 petition, the original ETA Form 9089 and additional required evidence to the Texas Service Center within seven days of filing. The matter is remanded to the director for further consideration of the merits of the instant petition. If the director finds that any initial evidence is not found in the record, the director should issue an RFE to the petitioner with regard to any additional evidence.

ORDER: The decision of the director is withdrawn. The matter is remanded to the director for further consideration of the merits of the petition. The director should provide the petitioner with the opportunity to provide any further evidence with regard to any issues of concern.

⁶ The AAO notes that this same document is both date stamped for its receipt but also has an initialed denial stamp dated April 2, 2008. An IBIS fingerprint check for the Texas Service Center is also stamped on the I-140 petition.